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# ABSTRACT

OF THE

# Sea-Laws,

As Established in Most

# KINGDOMS

O F

# EUROPE,

But more particularly in

*England and Scotland.*

---

L O N D O N ,

Printed for Isaac Cleave next Serjeants  
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ГРАММАТИКА  
ЛІНГВІСТИЧНА

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TO  
ADMIRAL  
CHURCHILL.

*Most Worthy Sir,*

**T**He Lustre an Author receives from the Virtues of his Patron, proves the necessity of an Epistle of this nature. The Authority of his Protection, insinuating a Worth in his performance. In the pursuit of this Interest, as well as the gratifying my inclinations, to make good the

®

*The Epistle Dedicatory.*

particular esteem a person of some  
Note in my Family, whilst living,  
entertained for you, I humbly  
beg leave to lay this small Treatise  
at your Feet. And though the  
Eminence of your Virtues, and the  
many Proofs you have given of  
them to the World, prevent the de-  
sign of these Lines (the one setting  
you above any Encomium, the o-  
ther giving no room for the Office  
of an Herald to proclaim them)  
Yet thus far I may presume to as-  
sume you, that I cou'd not make  
choice of a Patron more worthy  
such a Subject, nor a Subject more  
becoming the Dignity of its Pa-  
tron. A Subject no less than those  
Laws, the maintenance whereof is  
the only Prop of our present Hap-  
piness at home, and our Grandeur  
abroad; A Patron who moves in  
one of the highest Spheres in their  
respective Kingdoms, and a Con-

*The Epistle Dedicatory.*

Constitution, and whose Merits are  
as eminent as his Office.

Give me leave, Sir, from the  
gradual Encrease of your power, to  
insinuate the Greatness of your  
Mind, which seem'd to scorn a  
precarious advancement, which  
you well knew you might one day  
lay claim to. As your perfect  
Knowledge to obey was a certain  
Omen of your present Commands,  
so these are as evident Proofs of  
your former Obedience. In each  
Station you have exerted a Genius  
peculiar to, and worthy of your  
self.

These considerations, Sir, induced me to believe this small Performance of right belong'd to you. I cou'd not but esteem your immediate Care of the Sea-affairs, joyned with the Dignity of your Office, and your personal Merit, an

*The Epistle Dedicatory.*

undoubted Claim to the Patronage  
of the Sea-Laws.

Though I cannot offer any  
thing in the behalf of this Treatise,  
yet the difficulty of the work gives  
me hopes of your Candour in the  
Censure of it. And the less I have  
performed, the greater necessity I  
lye under of your Protection, to

*SIR,*

*Your Most Obedient*

*Humble Servant,*

*T. Neale.*

---

# THE PREFACE.

**S**UCH is the advantage and use of Shipping, that if we reflect upon Antiquity, and trace the Ancients down to our times, we shall find the grandeur of their Princes depended on it; their Kingdoms flourished or declined in proportion to the encouragement or neglect of their Sea affairs. This it was that so often changed the Seat of Empire, and translated it from State to State, according to the success of their happy applications to it.

The Rhodians first gave birth to a Seafaring Government, and by it grew to such an eminent pitch of Grandeur, as to Lord it over all other powers. Nor was their Wealth inferior to their Authority: All Nations admired and feared the Industry of that people, and Neighbouring Princes paid

## The Preface.

Tribute to their power, and modell'd their Government on the Sea to the Equity of their Laws.

Thus Tiberius Cæsar, Hadrian, Vespasian and Trajan successively referr'd their Sea-faring debates to the judgment and decision of the Rhodian Law. So their Successor Antoninus, in answer to a complaint made to him, confessed that tho he was Lord of the World, yet the Law was Master of the Sea, and referred the matter to the Determination of the Rhodians. Thus even Rome, the Mistress of the World, submitted to these people, and acknowledged the benefit and equity of their Laws: Which, to the Immortal Honour of their Legislators, govern'd the Sea at least a thousand years. Tho the Romans took care to improve, or rather interpret them, the better to provide against the fraud that crept in, to the oppression of their Sea-farers.

But upon the Subversion of the Roman Empire, these, as well as all other Laws, became extinct; and the Romans after were obliged to establish new: and this was indifferently permitted to every chief Sea-faring Town on the Mediterranean, as they of Marseilles did, An. Dom. 1162, and so the Genoese

## The Preface.

1186, Peloponnesus in 1200, the Venetians 1215, and others: Which Laws stinuē valid in the Mediterranean to this

The Great Ocean, which is our Sea, first received its Laws from the Island of Oleron, situated on the Coast on France; where all debates in the Sea affairs were decided, and these Laws were afterwards made use by the Dutch. So the Kings of Scotland and England made several Decrees concerning the Sea affairs\*. But tho there are several

acts of most Princes of Europe touching the Act. Parl. Sea, yet the fragments of the Rhodian Law <sup>Vide Scot.</sup> are translated by Shardius, and intitled Leges Navales Rhodiorum, & Leges Selectæ Rhodiorum, by the common consent of <sup>Vide</sup> Nations, are still valid throughout all Eu-<sup>statut.</sup> rope. <sup>Angl.</sup>

And since the Laws of the Sea are the matter in hand, it will not be unnecessary, in the pursuit of the following Treatise, to obviate the Objections against them; as if an uninterrupted Liberty were to be permitted to all Nations indifferently on all parts of the Sea, to fish where and when they please; and all to enjoy that in common which is the undoubted property of some. And to support this

## The Preface.

this Objection, are produced the Opinions of Poets, Orators and Philosophers; Land and Sea by the first condition of Nature hath been, and should be common to all, and not appropriated. Against this the Scripture will furnish us with authority sufficient. For God having made and disposed the four Elements for mans use, bids him subdue

Genel. 1. Earth\*, and rule over the Fish. Wh

28.

plainly implies his Dominion and Empire over the Sea as well as the Earth. So after the Flood it is said, Replenish the Earth and the better to do it, God, out of Justice against the attempt made upon him at the building of Babylon, and to prevent the like presumption for the future, divided it. For Moses says, These are the Isles

Gen. C. the Nations divided in their Lands

10. V. 5. From hence it is evident, that things are not so naturally common, seeing God, the Author of Nature, is as well the Author of the Division as of the Composition. And indeed this not a little demonstrates the Indulgence of Heaven for the Care of Mankind.

† Ulp. de Reb. eor. qui sub Tutel. For it is as true a Maxim as common, † The Community breeds Contention and Quarrel. That what is possessed in Common, by a depravity of Nature, is neglected and despised.

No

## The Preface.

the large increase of Man in process of replenishing the Earth, and consequently filling it, the Goods of every Region being not sufficient for their Necessities and excess, gave birth to Traffick by Sea, not for the ruling the Fish, as God commanded at the beginning, but also to transport Saries for their use; and therefore the Earths too became divisible, and required a Partition with the Earth. Videmus, Baldus de Jure Gentium, in Mari Regisse distincta sicut in terrâ aridâ. Thus, scripture is proof far above the opinions of Philosophers and Orators, &c.

It to answer the Opinions of some: It is reckoned, that no man is hindred or forced to come to the Sea side to fish. That this is a Community of the Sea to all without distinction. That the Emperor Dives Pius in his letter approved such a Community for the Fishers of Formian. But then it is to be considered, that these Fishers were not Aliens and Strangers, but his own Subjects; which is allowed to all people within their own Nation; who by the Roman Laws concerning the Community of the Sea-shore and Coast, it is permitted to private men to build Houses n the Flood mark, and appropriate them

## The Preface.

them to themselves, according to that Neratius, *Quod in Littore quis Aedific ejus sit*; yet it is conditionally so, p  
vided the Prince give authority for it.

Now what creates such parties for Mare liberum is the misinterpreting word commune, which the Partizans it expound as free and uninterrupted to Nations; When indeed the Construction limited, and implies no more than pub  
cum or populicum, a thing publick common to any one sort of people of Nation, and not for all of all Nations. Nor does Jus Gentium mean the Law downe by the common consent of Nations but only notes the Example of the Law Custom of other Nations. So that the fish on the Seas or ashore was common to every one of the Roman Empire, as the same common to all of other Nations on the Seas or Coasts.

Nor is the Objection of Placentius greater force, when he says, That God the only Lord of the Sea. For he is less the Sole Governour and Lord of Land, and so that wou'd destroy a property of the Land which all grant. A cert  
Author says, that no Nation nor any

## The Preface.

one person can possibly obtain a Property in the Sea; neither Nature nor the common necessity suffering it to be acquired in property to an occupation.

To enquire then into the supposed impossibility, that the Sea should be occupable or acrable. We cannot, says one, appropriate the Sea, it not being solid like the Land for us to trade on, and also continually ebbing and flowing. As to the first, it cannot hinder the possession of it, if we will allow the Law that which all grant the Land. For it is not required from a Man that would possess himself of any Tract of Land, to traverse over every particular part of it, but sufficient if he enter on any part, with intent to possess himself of the rest: So it is necessary for the Sea. And tho the Sea is liquid, fluid and unstable in its particular parts, yet in the whole body it is not so; because it keeps the prescribed bounds strictly enough as to its chief places and limits.

Another Objection is, That there can be Marks or Limits as at Land to divide the Seas by, and therefore no propriety.

For, says an Author by way of Rule, Mundum dividunt non ullis limitibus aut Naturâ aut manu positis, sed imaginariâ quadam Linea, quod si recipiatur,

## The Preface.

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ur, & Geometriæ terras & Astrono-  
Cœlum nobis eripient. The World is  
vided not by marks, put either by Nature  
the Hand of Man, but an Imaginary Line  
which if we admit of, the Geometers, says  
may steal the Earth from us, and the As-  
tronomers the Heaven. It is to be confess-  
there are not in all parts of the Seas, Is-  
or Sands, nor Rocks, or other equal and  
visible Marks above the Water, to prescr-  
or lay out the limits and bounds of the  
divisible part of it. But God, who is the  
Distributor, and first Author of the Division  
and Distinction of both Sea and Land, has  
given an understanding Heart to Man for  
the same effect, as well as for all other ne-  
cessary actions wherein he hath to im-  
plore himself. So that to a miracle, God has in-  
structed them by the help of the Compass,  
counting of the Courses, sounding, and oth-  
ways to find out, as far as is expedient  
for the certain reach and bounds of the Sea  
properly pertaining to any Prince or People.  
Which bounds Bartolus extends and allow-  
for Princes or People at the Sea side a  
hundred Miles distant from their Coasts  
and justly, if they exercise a protection  
and conservacy so far, and this is called

## The Preface.

the Civilians, Districtus Maris and Territorium.

Since then, as Papinian observes, in *libibus Questionibus vetera monumenta* *re*  
*guenda.* What more evident Monu-  
ment can we of this Nation have for our  
right in the Narrow Seas, than the Isles of  
Guernsey; and for the Eastern Seas direct  
from Scotland, nothing is more notorious  
than the Covenant between the Scots and  
the Dutch, concerning the length of their  
approach towards Scotland by way of fishing.  
bus far concerning the impossibility of a  
tenure or Occupation on the Seas from its  
solidity. It remains to take notice of the  
objection from its continual Flux,  
which makes it appear not one and the same  
body, but daily changeable.

Now tho the Sea changes many ways, and  
ten by its ordinary dashing against the  
oar, by its mixture with other Waters,  
elling in its self, &c. Yet since the great  
body of the Sea most constantly keeps the ap-  
pointed place limited by God, the Nature of  
the Sea may be acquirable.

Martian affirms that if a private man has  
got and exercised fishing in any Creek or  
brook of the Sea for some time, it is sufficient  
for

## The Preface.

for a prescription to forbid all others to fish in it. It is then to be demanded why a private man, that has no care nor respect but to himself, be privileged above, and preferred to a Prince, who for the Publick safety of his People in common, and all Traders passing his Coasts, is at great charge and trouble to preserve the nearest to him. Such a publick Good certainly merits the Tribute of that which is preserved by it. Thus far concerning a Mare liberum.

Which, if permitted, would give birth to the greatest inconveniences.

Thus having evinced the propriety of the Sea, we have laid a foundation for the following Treatise.

THE COURTESY.

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A B S T R A C T  
O F A L L T H E  
Sea Laws, &c.

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C H A P. I.

AS the Sea-Affairs more immediately concern Seafaring Men, and such as intermiddle and correspond with them, so the Doubts, Differences and Controversies arising from them, touch only such, which are Owners, Out-traders, or Hivers, Masters, Pilots, Mariners, Clerks, Merchants, Passengers. The Owner is the Person obtaining a Property of the ship, or any part of it. The Out-

B trader

*An Abstract of*

trader or Hirer is he, who (by Virtue of his Purchase, or Partnership for a Voyage or more, during the hiring and lease of the Vessel,) is entitled to the Profits and Commodities arising from it. The Master is he, to whom the whole care of the Ship and her Cargo is intrusted. The rest are all known. Now it often happens that these three distinct persons are involved in one; and he that is Master, is Out-trader, and Owner. Though more commonly they are distinct, and consequently their Offices are so. The Cognition of their debates falls not under any Judge indifferently, but only the Sea-Admiral. And seeing the Knowledge of their respective Duties is of great benefit to Sea-faring persons who are frequently abused because ignorant of their Priviledges, I shall treat

First, Of the Office of the Judge  
The Members of that Court, and  
Their manner of Proceedings.

Secondly, Of Persons ordinary in Ships, with the freight thereof, as belonging to the chief Use of Shipping.

Thirdly, Of the Power, Duty, and Priviledge of these in Ships.

Fourthly, Of the Causes of Losses and Damage in Sea affairs, with the Redress thereof.

Fifthly, Of Priviledged Ships, Shipwrecks, Ships, and Things taken and found on the Sea, or within the Floud Mark.

Sixthly, Of Fishing, Fishers, Ferryers, Watermen, and Shipwrights.

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## C H A P. II.

**T**He *Romans* in the beginning of their Empire digested their Sea affairs into three Offices. The first, That of the Charge of their Shipping: The Officers whereof were called *Duumviri Navales*. The second, That of the Command of their Fleets and Navies

vies. And their Admirals were named *Archigubernii*. The third, That of the Jurisdiction in Sea-faring debates. The Justiciaries of which were called ~~seigny~~. And after the Seat of the Empire was removed to *Constantinople*, the Commander in chief was *Magnus Dux Clasis* and *Drungarius Magnus*, as the chief carrier of the *Pinsel* or Flag. In process of time he was stiled *Admiratus*, from *Amiras*, a *Saracen* word, signifying an Overseer or Captain by Sea or Land. Whence comes the *Italian* word *Amirante*, as well as *L'amiraglio* for the Leader of their Fleets. Whence also seems derived the word *Admiral*, which is commonly received in most parts of Europe for the chief Commander of a Fleet.

The Admiral then is properly he that presides over, and governs all Sea affairs. Who with the *Romans* was *Præfetus Maris*; with the *Græcian* *Thalassimcha*, or Governour of the Seas. To whom they appealed in all Sea-faring debates.

Thus far concerning the Names for Commanders of the Seas; and if we

search into the Register of Time, we  
nd the Jurisdiction of these Governours  
first permitted to every President in-  
ifferently on the Sea Coast. But after-  
wards they constituted Special Judges.  
Who every of these were accountable to  
the Grand Judge or High Admiral, whom  
they stiled *Prefectus Praetorio Sublimissi-*  
*us*, from whom there was no Appeal.  
And the better to secure this Authority  
to the Admirals, in the due obedience of  
sea-men to their Jurisdiction, it has  
been thought convenient by all Nati-  
ons, and unanimously agreed on, that,  
considering the Admirals obtain so spe-  
cial a power and prerogative over the  
lives of Men on the Sea, they should  
govern by Laws peculiar, and have a  
Jurisdiction proper to themselves over  
all Seafaring men within their bounds,  
all Causes and Debates, as well Civil  
as Criminal. So that no other Judge  
presume to intermeddle therewith, un-  
less by Commission from the Grand  
Admiral, or in some difficult causes.

Now seeing the Admiral himself is  
commonly resident at Land, or if at  
Sea, not possible to bee every where, and

consequently is not capable of an immediate Exercise of this Authority (which is necessary) on the Sea: It has been judged convenient, for the entire preservation of his Jurisdiction, to constitute a Vice Admiral, with Captains, to supply his absence; and considering the Dignity and Difficulty of his Office, as well for the Aggrandizement of the one, as the Ease of the other, He constitutes his Deputies for particular parts on the Sea-coasts, with Coroners to view the dead bodies found on Sea or on the Coasts, and Commissioners or Judges General to preside in his high Court by Land, with Clerks, Procurers, Doomsayers, Marshals and other Officers, to execute his Authority both in Peace and War; to sit and hold Courts when and where they please, to hear Causes, to execute Justice, to Imprison or Release, as the matter before them shall appear, and to command the Queen's Prisons to keep their Prisoners in.

In Scotland, before the constituting of our Admiral, the Deans of Gild were the ordinary Judges in Civil De-

bate

bates between Mariner and Merchant, as the Water Bayliff between Mariner and Mariner. In Cases Criminal they appealed to the High Justice; which now are peculiar only to the High Admiral. And therefore his Judge or Commissar, called Judge Admiral, and none other, is to sit to hear and determine in Seafaring Causes, to receive and examine upon Complaints, Contracts, Offences, Pleas, Exchanges, Asssecurations, Debts, Counts, Charter Parties, Covenants, and all other Writings concerning lading or unlading of Ships, Fraught, Hire, Money lent upon Casualties and Hazard at Sea, and all other business whatsoever amongst Sea-farers done on the Sea, either on this side or beyond Sea, together with the Cognition of Writs and Appeals from other Judges. To take Stipulations and Insinuations in the Books of the Admiralty, and to do all other Offices that fall under the cognizance of that Court. And therefore to Arrest and put in Execution to enquire within and without Liberty, by the Oaths of 12 Persons upon all Offences.

## C H A P. III.

**T**He Clerk of the Court of Admiralty, as his Office differs very much from that of the Clerks of other Courts, so besides the Vigilance and Industry requisite in such, shou'd have also several Registers ; as well for Congees, Safe conducts, Passports, Sea Briefs, without which no Ship shou'd sail in the Sea in time of War, nor go long Voyages in time of Peace, which no other Judge has power to grant, but the Admiral only ; and for the reports of the Skippers and Captains at their return to the Admiral, as for the Names of Merchants, and Passengers, and Owners, the Skipper being obliged to give up the said persons by Name, as no man can take upon him the Office of Master or Pilot without a tryal of his ability and experience ; so such tryal ought to be registred in the Books of the Admiralty ; which Registering within

Secund.  
A& P 21.  
Jism. Jac.  
5. Cap. 27.

within the *Thames* only belongs to the *Trinity-house*. So likewise all Money See the Charter of the Trinity House in Thames. lent upon hazard at Sea, by the *Romans* called *Pecunia Trajectitia*, for a certain Interest stiled *Fœnus Nauticum*; for which the Lender run the risque; and all Bills of Assurance should be done before the Clerk of the Admiralty. Nor may any other Clerk presume to intermeddle with Sea affairs, unless with special Licence of the Admiral.

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## C H A P. IV.

For the speedier dispatch of Causes in the Admirals Court, and for the better providing against Injuries and Injustice, It has been judged necessary to oblige by Oath, the Procurers, before they be heard, to do nothing maliciously and vexatiously; but as soon as they perceive their Action unjust in any part of the process, they shall discover it to their Clients; and if they insist on it, then to the Judge. That they

they shall not collude with the Adver-  
sary to betray their Client, nor dis-  
cover his Secrets. Nor is this Oath of  
Fidelity administred to these only, but  
to all other the Officers of the Court,  
for the better and juster execution of  
their respective Duties ; and this at  
their admissions.

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## C H A P. V.

**T**He Controversies and Debates of  
Sea-farers, and their Actions are to  
be decided according to the received  
Laws and Statutes of the Sea ; but upon  
failure of these, Custom is as prevalent, it  
being the usual Interpreter of all Dispo-  
sitions and Ordinances. And in case  
of defect of both these, then the last  
appeal is to some judicious upright per-  
son in the Profession. No opinion be-  
ing more to be relied on than that of  
an honest and expert person in his own  
calling. But in the manner of Pro-  
ceeding, It is a perpetual Priviledge

quot

*quod velo levato*; and that is, that Causes should be heard and determined briefly, without the tedious formality and solemnity of other ordinary Courts, as only looking to God and the Truth. And this more especially in cases of Shipwrack; as it would be a Cruelty to vex such unfortunate wretches with the long ordinary proceedings of Courts, and therefore they need not put in their Petitions in writing.

As Navigation tends to the aggran-  
dizement of a State, so whatever shall ob-  
struct that, must be prejudicial to it. A summary process therefore should be common to all Sea-farers, lest by the loss of their Right, or their Trade, by long vexatious Suits, they be rendered incapable of serving the Publick, and an incumbrance to that Government, to which otherwise they wou'd have been the glorious Instruments of advancement. Which sort of process is so urged by the Doctors of Law, that they advise Judges, who fear Appellations or Advocations, to prevent the same, by an immediate Execution, in Causes of Spoyl or Wreck: So that upon

every

L. de Sub-  
messis. C.  
de Nauf.

Lib. 11.

Bartol.  
Lucius &  
Johannes  
de Sub-  
messis

every Interlocutor they may proceed to Execution, making Restitution presently. Provided always that Cau-  
tion be first found by the Spoyled to satisfie the Sentence of the Judge of the Appellation, in case it shall happen to be made.

This is also a particular Priviledge of the Sea-faring Judicature, that altho by the common rules of the Law, where no *Litiscontestation* is past, no Witness shall be received *nisi ad aeternam Rei me-  
moriā, & adversario ad id citato*. Yet in Shipwrack, as a case very pitiful and extraordinary, any of the wretched Crew may apply himself to the Judge of that part where the Wreck happens, and prove by Witness brought with him, of the Wreck and Spoil; in order to prevent or repel the prosecution of any Owner of the Goods of such Ship wrecked, by an exception of an Innocent Loss. Which shou'd be done within a year and a day, and that by such as were in service to the Prince and Country. So in Causes of *Spoyl*, where, by the Laws of *England*, it is sufficient for the *Spoyl-  
er* to prove his Goods by his *Mark, &c.*

In which doing no Citation is required, and that against the Common Law. Nay, the Death of the Ship-broken Crew may not only be proved by the rest living, but also by the persons, who were present at the preparation of their Voyage; even their own Parents and Children, if none of the Crew be alive.

Vide  
Statut.  
Angl.

As this is a Priviledge extraordinary for such Chances, so Merchants and Mariners sayling together may testifie of each other of their Society within Ship, provided they are not byassed by Interest, or fear of Loss. This is allowed to Mariners for or against the Skipper at the end of the Voyage, and when free from his Command. For when the truth cannot otherwise be sifted out, then unable persons may be heard. And that no impediment in affairs may arise from the ealumnies of vexatious persons under colour of Law, It has been provided, that not only the common Caution, *Judicio sisti & Judicatum solvi*, be kept on the part of the Defender; but also that the Pursuer or Prosecutor shall find Caution *de expensis sol-*

*solvendis*, if he fail in his proof. And if the party prosecuted be refractory and stiff, and will not appear in his own defence and of his Ship, or things challenged after three or four Citations, directed from the High Court of Admiralty called *quatuor defalta*, ( that Citation called *tuum pro omnibus* not being sufficient to convince one of *Contumacy* and *Contempt* ) especially in the claim of a Ship, or any part thereof, or any such like Goods ; Then the Judge may order his Marshal or Officer, by his Sentence called *primum decretum*, to put the Plaintiff in possession thereof, at least to the worth of the Suit. Provided nevertheless that If the party appear within a year and a day after offering the Expence made to the Prosecutor, and caution to obey the Definition, he shall yet be heard upon the Propriety. Nor is it necessary to execute the Summons and Citation elsewhere, but where the Ship or Goods in question be.

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## C H A P. VI.

AS persons sailing in Ships are of divers orders, so they are diversly stiled. He who has the charge of all the Ship and Skippage is called by us the Master of the Ship ; as by the *Romans Navicularius*, and *Magister Navis* ; by the *Dutch Skipper*, by the *Grecians Nauarchus* or *Nauclerus*. But in a Ship of War the principal person is called Captain. The next person to the Master is he that guides and directs the Ship in her Voyage : And he with the *French*, Pilot ; by us and the *Dutch*, Steirs-man ; by the *Romans*, *Gubernator* ;\* Vide Le-  
\* by the *Italians*, *Nochiero*, *Pilotto* and ges Nava-  
Navarchus. The third, the Masters Mate les Rho-  
or Companion, chiefly if the Master be  
Steirs-man ; by the *Grecians* and *Romans* stiled *Proreta*. His charge is to  
command all before the Mast. The  
fourth person is he who attends upon  
the mending of the faulty parts in the  
Ship,

Ship, called by us and the *Dutch* *Timmerman* or *Shipwright*. By the *Grecians* and *Romans*, *Naupagus* or *Naupagus*, but by the late *Grecians*, *Calaphates*. The next is the *Boats-man*, who has the charge of the *Ship's Boat*: With the *Grecians* and *Romans*, *Carabita*; *Carabus* denoting the *Boat of a Ship*. The next requisite in a *Ship* of great Burthen is a *Clerk*, with the *Italians* called *Scrivano*, who is to take account of all things received or delivered in the *Ship*; with all the needful expences made upon *Ship* and *Shippage*: Who for the faithfuller discharge of his *Duty*, ought to be sworn before the ordinary *Sea Judge*, as is practised in *Ancona* and other parts of *Italy*.

*Ferretus*  
*de Ret.*  
*Jure Nava-*  
*li.*

The seventh is the *Cook*. The eighth is the *Ship-boy*, called by the *Grecians* *Nauphylakes*, by the *Romans* *Distarius*, by the *Italians* *Guardiano*. Now as all these are distinct in Office and Name, so they should be distinguished in their hires and wages, after the Custom of the Country. The rest of the persons belonging to the *Ship*-*page* are promiscuously called *Mariners*;

with

with the *Romans Nautæ*: But those of the baser degree, as Boys and Prentices in Ships *Mesonautæ*.

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## CHAP. VII.

NO Ship shou'd be fraughted without a Charter-party written and subscribed, containing both the Master and Merchant, and the Name of the Ship to prevent any doubt that may arise; and that the Master shall find a sufficient Steirfman, Timberman, Shipman, and Mariners convenient; Shiptycht, Masts, Sails, Tewes, strong Anchors and Boat fit for the Ship, with Fire, Water and Salt, at his own expence. And this Charter-party, among the Western Merchants and those of the great Ocean, usually is made to perform all things requisite by the Laws of *Oleron*. And if there be no Writing, but an Earnest, then the Merchant, if he falls off, loseth his Earnest, But if the Skipper recedes from the Bar-

gain, he loseth double Earnest. If the Ship be not ready to sail at the day appointed in the Charter-party, the Merchant may not only free himself of her, except he take no notice of it to discharge her (for then by his silence he appears to consent again) but may obtain all Charges and Interest, except the Master produce some extraordinary necessity, that may be proved unavoidable: and then he loseth only his freight, because he has not deserved it. But if the Merchant be faulty, he shall pay the Skipper and Ship's damage; or, according to the *Rhodian Law*, shall entertain the Kippage and Company ten days: And if then he stays longer, shall pay the freight of all accordingly.

But if the Ship in her Voyage become unable, without the Master's fault, or that the Master or Ship be arrested by some Magistrate in her way, the Master may either mend his Ship, or freight another: But in case the Merchant agree not thereunto, then the Master shall at least obtain his freight, so far as he hath deserved it.

For otherwise, except the Merchant

com.

consent, or necessity oblige the Skipper to put the Goods in another Ship worse than his own, the Master is liable to answer all losses and damage; except both the Ships perish that Voyage, and no fault or fraud be found in the Master. It is esteemed a fault for the Master to put to Sea either without a Skilful Pilot, or sufficient Furniture and Necessaries, according to the usual clause of Charter-parties; or if the other Ship which the Goods are put in is not sufficient, or if the Master hazard the Ship to Sea in an undue time. It was forbidden by the Emperors, *Gratian*, *Theodosius* and *Valentinian*, to put to Sea from *November* till *April*; and by the Kings of *Scotland* from *St Jude's Day* till *Candlemas*; and it was always accounted a fault for the Master to make out of a Port in time of a manifest Storm. And if a Skipper set forth his Ship for a certain charge, and then takes in any more, he ought to lose his Freight justly. And in such case, if there is a necessity that Goods are cast overboard, they shall not be made good by any Contribution, but at

the Skippers expence only. And if a Ship Port at any other Port than she was freighted to, against the Masters will, as by Storm or some force ; then the Goods shall be transported to the Port conditioned , at the Skipper's charge. But this must be tryed by the Oath of the Skipper, and two of his Mariners, or else he may be in further danger. Where it is to be observed, that the putting in at several Ports by the way does not imply a Diversity of Voyages. But if any man compel the Skipper to over-burthen his Ship or Boat, he may be prosecuted as a Criminal, and repair the damage arising from it. And if any Skipper let his Ship to any unfree man, and of no substance, and other qualities prescribed by King *James* the Third, he and his Mariners shall be lyable to the pains therein contained. If a Merchant put in more Goods in a Ship than was conditioned, then the Skipper may take what freight he pleases. It is imputed for a fault to the Master, if he directs his Course through dangerous ways, either for Pyrats, or Enemies, or other mis-

misfortunes, and damage happen thereby, So if the Master incurs any loss by carrying a Flag of any other Nation than his own. For as Packets, Pipes, Hogsheads, and such like, should be marked with the proper Marks of the Merchants to whom they belong ; so shou'd Ships be discerned one from the other by their own Flags. The Master is no less faulty if he delivers Coffers, Pipes, Packets, &c. open, which he received close and sealed.

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## CHAP. VIII.

**A**S the Master of the Ship has the whole power and charge of the Ship committed to him, so it is prescribed, partly by the Owner or Out-trader, and partly by the Common Law of the Sea ; as, to set her forth for freight, to take in Passengers, to mend and furnish the Ship, and to do this if there be a necessity for it, in a strange Country to borrow Money, with advice of the

\* Oleron. Kippage or Company \*, upon some of the Tackle, or to sell some of the Merchants Goods, provided that the highest price that the rest of the Goods is sold for at the Market be repayed to the Merchant. Which being done, the freight of those Goods so sold and repaid, shall be repayed by the Master to the Owner of the Ship, as well as the freight of the rest of the Merchants Goods, except the Ship perish in her Voyage. In which case only the price that the sold Goods were bought for shall be render'd, and for no other cause.

As for the Master's duty, he ought first, before he looses or makes Sail, to ask and obtain the consent of most part of the Kippage ; and if he is not a man of very good experience himself, he ought not to do any other thing of any consequence without their advice, on pain of answering whatever damage comes from such doings ; and especially if he sets forth out of any Harbour without an expert Pilot ; or if the Ship fall over in the Harbour. Thus as the Skipper's Rashness and want of Skill is to be corrected, so his Negligence and

Sloth

Sloth is to be punished. He is to take care that the Overlays and Cowbridge be not unticked, nor the Pump faulty, nor a sufficient Decking wanting;

\* That the Corn, Victuals, and such like, be fenced well from Water and Spoyle. Otherwise he is lyable to the damage: Unless the Ship was open in the beginning, and fraughted without any over-lap. Which kinds of Ships are called *Emphraetæ* and *Rephraetæ*.

This Duty further is required of the Master, that according to the Act made by King *James the Third of Scotland*, He give up the Names of all persons to be transported in his Ship before he makes sail. And at his return a just Inventory of the Goods of any Person which shall happen to dye during the Voyage; and that not only to preserve entire, the right of their Relations to them by a just Succession, but that also the Goods of Strangers may be kept safe and forthcoming for three years space, but by the custom of *England* one year, until the nearest Relation of the Deceas'd come and claim them; tho with this

<sup>\* Leges</sup>  
<sup>Naval.</sup>  
<sup>Rhod. art.</sup>

Liberty, that in the mean time the Bedding and Appurtenances may be used by the Master and his Mate, and what Cloaths the deceas'd had on at the time of his Death, may be deliver'd to the Boatswain and Servants of the Ship, as being therefore oblig'd to Bury him in the Sea.

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## C H A P. IX.

**B**ut besides this there is a duty incumbent on the Master, towards the Merchant and Passenger. He is oblig'd to return whatever Goods he receives within his Ship to him or them that deliver'd them; and those Goods are esteem'd deliver'd that are either actually put in the Ship, or are in the presence of the Master or Clerk as his Deputy laid to the Ship side; the same obligation extends to Boatsmen and Ferriers, tho' it is safer and prevents disputes to deliver them with Witness, to the Master or his Clerk, or Skipper, by

by him deputed for that purpose. The Master not being answerable for any thing put in his Ship without his or his Company's knowledge ; because when Men are found ignorant of matter of fact, they are always suppos'd to consent. But if the Merchant or Passenger keep his Goods, &c. in his own possession, and suffer any loss, then the Oath of the Skipper and his Kippage is sufficient. But if afterwards it appears they were guilty, they shall repay double the loss, and be punish'd also for Perjury. So likewise the Master is held answerable for any damage sustain'd through bad Hocks, Blocks or Lines, if they were shewn him beforehand by the Mariner to be faulty. And in those cases always the Mariner is equally obliged with the Skipper.

Further, whatever loss or damage happens to Passengers Goods by unreasonable stowing or breaking up, is to be not only repaired by the Master, but also he shall lose his freight : And in *Scotland* twenty pounds to the King, and for want of proof in this case the Skipper and Kippage are obliged to take their

their Oath. The Skipper is further ly-  
able to such damages as come through  
**Negligence or Chance**, that might have  
been prevented, or by Passengers or  
others than himself and his Kippage.  
And if such damage happen by a Ma-  
riner, the Skipper shall refund double,  
tho he may recover it from the Mari-  
ner. But he is free from any forfeiture,  
if he forewarns every one to keep his  
**Goods to himself**, and they consent  
to it.

These Conditions will appear very  
justly imposed upon the Master, if we  
consider he ought to hire good Men,  
and none but such in his Company: It  
being in his power to choose his Com-  
pany. Nor ought he to be ignorant  
of the persons he has to deal with; for  
were these obligations removed, it  
wou'd give great encouragement and  
occasion of stealth.

Now if through the Master's fault  
the Goods shou'd be Confiscated, as for  
non-payment of the Custom, or false  
Bills of the Goods Customable, or for  
transporting unlawful Goods, the Ma-  
ster shall refund the same with Interest.

But

But yet if the Master offer the just Custom, Anchorage, or whatever other Duty belongs to any Officers; and upon their unjust refusal, makes sail, the Weather and his necessity so requiring, in that case he may be legally defended at his return against the Officers of the Custom. Nor is it required that a Ship, that hath once paid her Anchorage, shou'd pay again, if driven by stress of Weather back into the same Port.

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## C H A P. X.

**T**He Masters Duty extends yet farther, and that to the Mariner. For since he has the ordinary Rule over his own Kippage or Company, he is to keep them in peace as long as they are under his command: And if any Mariner receives hurt either from his Service or his Companion, the Master must take care to see him healed, as the only person answerable for all actions

actions within Shipboard ; and then to use his authority in the recovery of the Charges from the other Mariner, and all the loss suffered by the party so hurt ; unless the latter has been the Aggressor.

And if a Mariner falls sick, the Skipper shall provide him with all things necessary and usual in the Ship, but shall not stay the Ship till his Recovery.

And upon it shall give him his hire ; or if he dye, to his Wife, or nearest Relations.

*\* But if his hurt was not got in the Ship's service, the Skipper must hire another in his place ; and if he draw more hire, then that Mariner shall refund the overplus. \* And further, the Master ought to lend his Mariners if they lack.*

Again, If the Ships Boat shou'd perish with any Mariners in it, through the Masters fault, in not providing good Tewes, then the Master shall pay one whole years hire to the Heirs of such as are drowned. Further, he ought to give the Mariners Flesh upon Sundays, Tuesdays and Thursdays ; and upon other days Fish or such like, with suf-

sufficient Drink : But no Meat to them that sleep not in the Ship: But yet both the Quality and Quantity of Mariners food and hire differ according to the different Customs of Countries, and the Conditions made at the entry of their Voyage.

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## C H A P. XI.

Touching the Duties and Priviledges of Mariners ; as they owe all due obedience to the Master, so they are to endeavour to avoid, or suffer his wrath ; yet after one blow given they may defend themselves. Now in case of Rebellion against the Master, as it is reputed such, when they lift the Towel three times before any one of them, and yet he will not submit himself, then he may be not only commanded on shore at the first Land ; but if openly strives, lose half his hire, and all the Goods he hath on Shipboard \*.

\* Oleron.

And

And if in this Contest a Mariner useth any Armour or Weapons, then are the rest to bind him, imprison him, and present him to Justice ; and in case any of them refuse so to do, he shall lose his hire, with whatever he hath on Shipboard. Further, if any Number of Mariners shou'd combine to force the Skipper to steer the Ship to any other Port than to what she was freighted, that then they shall be prosecuted as Criminals, and suffer Capital punishment \*. But yet, If a Rebellious Mariner repent in time, and offer some attonement and amends for his simple Rebellion, and the Skipper shou'd, maugre all his endeavours, obstinately refuse him ; such Mariner may follow the Ship, and be entitled to, and obtain his Pay \*.

\* Denmark.

Every Mariner is obliged to help his fellow on the Sea ; or upon his refusal loseth his hire ; and the Oath of the other Mariners shall be proof against him.

Mariners in a strange Port are not to leave the Ship without licence from the Master, or fastning her with four

Tewes,

Tewes, otherwise they must stand to the losſ ; and are to wait at the Ship till ſhe be discharged and ballasted new, \* and the Tackle taken down.

\* Den-  
mark.  
Oleron.

If a Mariner, at the time of looſing and lading, labour not with the rest, but abſents himſelf, and lyes idle, he ſhall pay a Fine, *pro re ratâ*, at the Maſter's diſcretion.

Half the Kippage, at leaſt in a ſtrange Port or Road, ought to ſtay on board, and the rest that go aſhore, tho with licence, are to keep themſelves sober, and refrain from ſuſpected places, or elſe be lyable to an equal punishment with ſuch as abſent themſelves when the Ship is ready to ſail \*. Or if he \* Den-  
reports himſelf greater than he really is mark, in his calling, he ſhall loſe his hire, half to the Admiral, and the other half to the Maſter. This ought to be more particularly in force againſt a bad Pilot. The Mariner alſo forfeits his hire, if the Ship break, and he contribute not as much as lyes in his power to ſave the Goods †. And if any ill ſhould † Oleron. happen to the Maſter, the Mariners are then obliged without delay to bring the

the Ship from whence she was freighted,

\* *Eodem.* unless it be otherwise provided \*.

A Mariner may carry as much Meat  
forth of the Ship as he can eat at a

† *Eodem.* Meal, but no Drink †.

A Mariner may keep his Portage in  
his own hand, or put it forth for  
freight, and yet the Ship is not to stay

† *Eodem.* for the preparation of his Portage †.

So that if the Ship be fully laden before  
the Goods for his Portage be brought  
in, he shall have the just freight of so  
much Goods.

If a Ship pass further than the Mariner  
was hired, his hire is accordingly  
to be augmented. If a Mariner be hired  
for a simple Mariner, and afterwards in  
the Voyage has an opportunity to be  
advanced to a Pilot or Master, he may  
pass, with Provision to render his former

† *Oleron.* hire; and so in case of Marriage †.

Mariners are not only obliged to  
loose, and deliver Goods overboard,  
but also if there be no Porters nor Car-  
riers in those parts, to carry them  
themselves, for such hire as other  
Workmen,

If it happen that the Ship shou'd be Prized or Confiscated, yet the Mariners are to receive their Wages; and if she prosper, to have their Pay in the same Money that the freight is pay'd with.

Lastly, A Mariner shou'd neither be arrested, nor taken out of a Ship making to sayl, for any Debt, but only his hire, and such other Goods as he hath in the Ship arrested, according to the quantity of the Debt, and the Master to be answerable for all \*. A Ship \*Oleron. being likewise a mans House, which by Denmark, the Civil Law is his sure receptacle and refuge, unless for a Sworn Debt, or a Penalty to the Queen, through some Crime.

## C H A P. XII.

**I**N Ships of great bulk and burthen, **I** as a Clerk is very necessary, and his Office of great moment, so he is put in by men of chief power, and sworn so.

D

lemnly

lemnly before some Judge, or at least before Owners and Mariners, that he shall justly execute his Office; that he shall write nothing but the Truth, and omit nothing. Nor may either Merchant or Mariner receive in, or carry out any thing of the Ship without his knowledge. So that no Goods cast away by Storm, or stoln or spoyled, that hath not been shewn to the Clerk, shall either be contributed to, to be restored, or be search'd and enquired after. And if they come safe to Land, the Skipper may take what freight he pleases, and the Clerk may apply as much as he pleases of that which is delivered to him to the wants of the Ship, but must satisfie the Owner thereof, being always accountable for his Receipts: But however he manages it, he is not to take in or give out any Goods

†Vid. Sta- by night, but in the day †.  
tuta Ang.

## C H A P. XIII.

IF a Pilot or Steersman be hired not only to guide the Ship thro dangers, at a time only, but for a whole Voyage, and he fail to be ready at the time constituted, he shall not only pay the Master and Merchants damage, but also the freight that is lost thereby, except in case of sickness, or some very reasonable and lawful Excuse. A Steersman after he has brought the Ship safe to Harbour, is no further obliged, it being then the Masters Office to take care of her Bed and Lying, and bear the rest of the Burthen, Charge and Danger. So that if the Ship, before she come into some safe Port or Harbour, perish, or Goods are lost or spoiled, the Pilot is accountable for them. And if he be so ignorant, that thro his Default the Ripage or Company foresee a manifest Wreck, they may lead him to the Hatches

† Oleron. and strike his Head off †. Or if the Mariners, without any impending Danger, perceive his Skill to fall short of what he professed it, then shall he both lose his Hire, and double it to the Admiral and Master, or else pass three times under the Ship's Keel †.

† Den-  
mark.

#### C H O A L P. XIV.

**T**HERE is a very great difference in the loan of Money by Land and that by Sea, The Money lent to Sea, from the Importance of the Words, which are *Pecunia tructitia*, supposes the hazard of the Lender. So that if any Accident happen in the Voyage, as that the Ships perish, or all be spoiled, the Lender suffers the Damage. But Money lent on Land, is without any Provision or Exception at the Peril of the Borrower, and therefore the Profit arising from such Money, is the value and price of the simple Loan only, which

is *Usura*. But the other is *Usura Maritima*, or *Fænus Nauticum*, which is not the price of the Loan, but of the Hazard the Lender runs during the Loan, which is a certain time agreed on. And in case the Money miscarry either before the Voyage, or after the term appointed, then the Borrower is accountable to the Lender. Or if the Borrower lay out the Money in unlawful Goods, or defraud the due Customs, and therefore suffers a Confiscation of them, he frees the Lender from any obligation on his part, and renders himself only lyable. But on the other hand, Money lent to Sea without Hazard, and with security, shall pay no profit. And if Money is borrowed to supply the Necessities of the Company in the Ship, and before the time appointed for a repayment, a Wreck or Spoil happen, then the Loss is common to all, and must be repaired by Contribution. But if the time for Payment were elapsed, then the Borrower is to repay it without Contribution. And in case the Borrower detain the Money beyond the term constituted for the return of it, he shall not only re-

pay the Profit agreed on before the Voyage, but also in proportion to the length of the time elapsed.

## C H A P. XV.

**N**ow the Master of a Ship is not only lyable to a Prosecution from the Party contracting with him, or obtaining any other Action or Claim against him, but also is as obnoxious to the Out-Trader, Furnisher, Hirer or Owner, as those who constitute the Master, and are to make good the Masters actions \*.

\* Parag. Exercitor. just. de Ob. ex quasi delic. T.T. Naut. caus. The Out-trader is he to whom the Commodity of the Ship redounds, and may lay his Action on any of them. *Ne in plures adversarios distrabatur qui cum uno tantum contraxit.*

But the rest of the Owners or Out-traders shall relieve this man *pro rata* of their portions, except the handling of the Ship be severally divided amongst them, or that the Master obtains not a

power

power and commission promiscuously over all: or if the Master has obliged himself beyond his Commission. As when he takes up Money to mend the Ship, when it needs not; or that he hath no Commission at all. In such case the Lender is to be cautious, or else must blame his own conduct only. It being the first Politick in dealing, to know well the persons we are to bargain with. And yet if it appears that the Ship is in want of mending, and Money is lent for that purpose, but otherwise applyed by the Master, the Out-trader must satisfie the Creditor. But above all, Money lent for Provisions to the Ships Company ought justly to be repaid, as preferable to all other Debts. But if a Merchant contract a bargain with a Mariner only, the Out-trader is free, and under no obligation to the Creditor, unless for some fault committed by the Mariner, and that more especially if he was hired and put in by the Out-trader; and tho by the Common Law of the Seas the Out-traders may not prosecute any person obliged to the Skipper, yet they have liberty to sue upon the Ma-

ster's Contract, as if they were Contractors Principal, because in such sort of Dealings he represents and sustains the Out-trader's person. But yet the Master is not answerable to the Out-trader on all accounts; as thus particularly, when the Passenger is non-solvent, the Master is not oblig'd to pay for him: It not being proper for him, upon the receipt of his Passengers, to dive into their circumstances and ability. Nor on the other hand, is the Out-trader held answerable for the Master's negligence, but for his own only.

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## CHAP. XVI.

**A**S there are Partners in Ships, so often divisions amongst them; and if any refuses to remain still as Partner, he cannot be obliged by Law, tho he had bargained not to separate. But in this case there are some restrictions;

ons; as when a Ship is newly bought or built for their purpose, it is absolutely necessary that she be employ'd one Voyage at the common expence and hazard of the Partners, before they may separate and be off: And then whoever wou'd be free shou'd rate his part, as he will hold or sell: and if he does not, and yet refuses to trade with the rest, then they may rig the Ship forth at their own charges, and the hazard of the party so refusing, so far as his part extends, without any account to him, or part of profit at her return †. But they are obliged to bring <sup>† Den.</sup> her home safe, or the value of his mark. part.

But if the persons, who obtain the greatest part of the Ship, refuse to remain as Partners, but are resolved to fall off; and if it so happen, that he who has the lesser part is not substantial enough to purchase their parts, nor can sell his own without great losſ, then are they all bound to appraise the whole Ship. And if for want of a Purchaser the lesser Partner cannot avoid the Oppression of the greater, then may the Judge

Judge Ordinary examine into the debate, and determine *as in omnibus aliis bone fidei actionibus*, that every man may have his right.

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## C H A P. XVII.

**C**ontribution, or Scot and Lot, in some cases on the Sea is as ordinary and common, as just and necessary: As when by the overburthen of Goods the Ship is pressed and in danger, and the Lives of those within it at stake, unless the overplus be cast overboard. The Master consults the Mariners; and if they refuse to consent, and yet the Danger and Storm continue, then nevertheless the Master may cast some Goods †, and they are obliged to a Contribution. But if the Merchant be present, he is then to cast first, and next the Mariners; and if these keep back any part, that shou'd be thrown over, to his own use, he shall restore double.

† Oleron.

Bu

But then when they come to Land, the Master and his company must take Oath that they threw Goods overboard for no other cause, than the safety of the Ship, Goods and Lives †, and when Goods are cast over they shall be repaired by Contribution of Ship, and such † Oleron. Goods as are preserved ; and not only of Goods paying freight and of Burthen, but of Cloathing, Money, Jewels, &c. which are not weighty ; and if Goods transported above the Overlap, or forbidden to be transported, are the cause of Danger to the Ship, and therefore are cast over, the Master is answerable for the Loss, and may be prosecuted as a Criminal. But if Goods unadvisedly, without the consent of the Owner, be cast forth on a sudden, the Owner may rate his Goods at their full value, the Company having by their rashness lost the privilege to estimate them : As also if Goods be cast, that were put into the Ship without the knowledge of Master or Clerk, they shall be excluded the Contribution.

## C H A P. XVIII.

**I**F a Ship or Goods are redeemed from Pyrates, the Contribution must be general; the Redemption tending to a general safety. But if it happen that a Pyrate has possessed himself of all, and yet detains but some particular Goods, and those not as satisfaction for the rest, then it appearing that the remainder is not safe by the loss of the others, but by an act of Generosity in the Pyrate, there shall be no Contribution raised for such Goods.

C H A P.

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## **C H A P. XIX.**

**I**F by the Losing of Goods cast, or any other accident, the remaining Goods received damage and spoyl, a Contribution shall be made proportionable to the damage so received.

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## **C H A P. XX..**

**I**F it be necessary to lighten a Ship of her Burthen, for her easier entring into any Port or Channel, two parts of the los fall upon the Goods, and a third upon the Ship: Except the Ship surpass in worth the Loading; or that the charge of the Goods be not the cause of her inability to enter, but some bad quality proceeding from the Ship it self;

† Oleron. self † ; or unless it be so provided in the Charter-party that the Goods shall be fully delivered at such a Port. And this Condition is Law. In which case it is to be observed, that if the Goods which are put in the Boat or Lighter perish by Lightning, the Ship and remaining Goods in Ship shall repair the damage. But on the contrary, if the Ship and remaining Goods perish after the Lighter is once safe, no Contribution shall be set on the Goods in the Lighter. Because it is a constant Rule, that only such Goods shou'd be lyable to Contribution when Ship and Goods come safe to Port.

There shou'd also be a Contribution for the Pilots fee, that is taken in, to guide her into an unknown Port ; and to raife the Ship off Ground, when the fault is not in the Master. So if two Ships rush against one another, and the Company swear their Innocency, and that it lay not in their power to hinder it, Contribution must be made for both their Losses. But if one of them perish, it cannot be, because no due proportion of the Loss can be made. This incon-

veniency

veniency too wou'd arise, that at any time a Malicious Skipper might set an old weak Ship against a stronger, in hopes to recover a Contribution, and perhaps surmounting the losse. Yet if a Ship be thus lost, the Owner has this means of redress, that he may lay an Action against the Master or Mariner that loosed her, or cut her Cable. Which Action is called *Legis Aquilia*, for damage done. So if such a chance happen in the day time, from a Ship sailing against another riding at Anchor, then the Master of such sailing Ship shall answer the damage of the other to the extremity; and so in the night, if the Ship riding hold out a Light, or crying out to forewarn the other.

If some sort of Goods, as Salt or Corn, be laid promiscuously, without distinction, by several Partners in a Ship, and that the Master delivers out to any of them his due measure, and it so happen that before he can deliver the remaining dues to the rest, the said Corn or Salt wash or loose, he that has the good fortune to be served first enjoys it fully, with-

without any Contribution to the rest because when these Goods were put in the Ship, they were delivered to the Master *tanquam in creditum*, and so he becomes owner, as of Money lent which none is obliged to render in the self same pieces, but in value, or such like Coyn, except it was conditioned otherwise, which in all things is Law. Nor is it a fault in the Master, he lying under an inevitable necessity, if he delivers it at all, to deliver it to some one of them first.

## C H A P. XXI.

**A**S to the manner of the aforesaid Contributions; Goods cast away are to be repaired to the price they cost, if the damage happen'd before Mid Voyage. But if after Mid Voyage, then to be proportioned to the Price the rest of those Goods bear at the Market.

Market. There being here a consideration rather of Loss than Gain.

Now as to the persons whose Losses are under Contribution, they are to deal first with the Master, to retain all the same Goods in the bottom of the Ship in his keeping, till the Rate be set and executed; or else may omit all other persons, and prosecute the Skipper *ex conducto*; which ceases if the cast Goods are found again.

The Master's Priviledge does not only consist in the detaining and keeping of Goods brought within his Ship as pledges for the freight, but also for due and timely satisfaction of such Contributions; because the imposed taxation and freight also is thought to chiefly touch the said Goods, and therefore the Master may detain them till satisfaction be made; tho commonly the with-holding of other mens Goods is not allowed.

## C H A P. XXII.

**S**HIPS or Boats in the service of the Country or the Prince obtain great Prerogatives: They go free from all Imposts, Customes and Arrestments, not only at their going out, but at their return, according to *Frederick* the Emperor's Constitution. Yet if a Skipper, serving Prince or Country, wilfully falls on Coasts and By-Courses, where he shou'd not, to their hurt, he merits Death: And the Commander or Officers that wittingly suffer it incur a forfeiture of all their Goods. Or if any man force the Skipper of these, or any other Ships, to take in more than his just charge, he shall not only be answerable to the full for all hurt and loss, but also be publickly punished. <sup>† Art. 49.</sup> <sup>†</sup> And as these are the Priviledges and Conditions of Ships immediately serving the Prince, so all sorts of Ships are obliged

<sup>† Art. 49.</sup> <sup>†</sup> **II. Selectar Naval.** And as these are the Priviledges and

obliged to this service upon Command †, <sup>† Vide</sup>  
and if they refuse, the Ships are confis- <sup>Tit. de</sup>  
cate, unless they produce a testimony <sup>non Excus</sup>  
from the Admiral of some very lawful <sup>and. C.</sup>  
and substantial excuse \*. And further, <sup>\* De Offic.</sup>  
It is observable, that Masters of Ships <sup>Admir.</sup>  
or Ferriers once so professed, are bound <sup>Ang.</sup>  
to serve the Subject in common as well  
as the Prince ; excepting such as have  
left the Trade, or are under Safe Con-  
duct, or have taken in more than they  
can well carry.

And this is a common and uninterrupted Priviledge to all sorts of loaded  
and burthened Ships, to take the nearest  
place to the shioe to discharge and un-  
load ; and for that end , the Ships  
lightned to give them place : and the  
persons who build, purchase or dress  
Ships expressly for a common encrease  
of Wealth to their Country, are reputed  
as priviledged.

## C H A P. XXIII.

**I**F Strangers incur Shipwrack in *Scot-land*, they are to receive the same favour of us as we from them in the like case \*. That there shall be no <sup>138 Act</sup> ~~or. Jacob.~~ <sup>I.</sup> Confiscation used against them, unless they use it against us, or are Pyrates or Enemies to Christianity. Otherwise whoever deprives such Shipwrackt persons of their Goods, shall, if prosecuted within a year and a day, repay fourfold to the Owner, and as much to the Prince or his Admiral. By the Emperor *Antonius* his Order the Robber of such Goods shou'd be Battioned and banished for three years, if he be of honest descent; but if mean and ignoble, then to be sent scourged to the Galleys or Metal Mines.

If any man shou'd prove so inhumane and barbarous as to hinder any assistance to the shipwarcked men in danger, he is

to

to be reputed a Murderer ; and therefore none may hinder Ships from casting of Tews or Anchors on Land \* : \* Gaius  
 as was decided between *Couper* and *Seagy* †. So is he equally criminal that holds forth a Lanthorn to decoy Ships to dangerous places, instead of a good Port or Harbour, or safe Road. And tho no damage shou'd accrue to the Ship or Company, yet the Admiral may punish him as he thinks fit. For this reason are Fishers in the night forbid to fish with Lights, lest it shou'd deceive Sailors with a false shew of an Harbour. But the better to prevent such mischiefs, it was ordained by *Hadrian* the Emperor, that such as had any possessions on the Sea Coasts shou'd look very diligently to such chances ; upon pain of answering all things that shou'd be so lost by Robbery. Now if no claim was laid in due time to such a Wreck, formerly it belonged to the Prince his Customers, but now to the Admiral by the Prince's Grant.

Again, If the Ship in a Wreck only perish, and the Goods saved, then the fifth or tenth penny, according to the easie

easier or difficult preserving of the Goods, shall be paid out of the Goods so preserved. But if the Skipper carry in the Ship to a Port, or part where he shou'd not, nor the Merchant wou'd not ; then the Merchant is free, and the Skipper lyable to the loss, and answerable for the Ship then broken.

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## C H A P. XXIV.

**N**ow of things found within the Sea or Sea flood, there are three sorts : The first, found on the Stream <sup>†Faber & alis] Iust. de Rer. Divis. Sect. Pen.</sup> floating, are called *† Floatson*; the second, found at the bottom of the Sea, or drawn up, *Lagon* : The third, cast on Land, but within the Sea flood, *jetson*. Now, touching *Floatson* and *jetson*, some think such Goods shou'd be proclaim'd as at Land, and forthcoming to the Owner and Proprietor thereof; and upon the non-appearance of such Owner, then the Party finding, comes

to be the Proprietor. And if he be rich, others think he shou'd give such foundlings to the Church or Poor. But now it is otherwise, the Prince, or person obtaining a Superiority or Sovereignty on the Sea-coast, where such Goods are found, claiming them as his right, which before was allowed to the finder. So if any Ship or Boat was found on the Sea or Sea Coast, without any person in it, and not claimed in a year and a day, then one half went to the finder, the other to the Prince. But since the constitution of Admirals, they are differently parted. In *France* the King claims one third, the Admiral another, and the finder another. In *England*, between the finder and the Admiral †: And if the finder conceals such Goods, or any part of them, he not only loseth his just part, but may be fined at the pleasure of the Admiral.

Vide de  
Offi. Adm.  
Ang.

If Whales, or other great Fish, or Ships or Boats, without any person in them, be driven by Winds or Waves, to any Coast or Land, then the whole belongs to the Admiral only.

## C H A P. XXV.

**A**nd as to Goods taken upon the Sea, either from Pyrates, or open Enemies, or such as are not professed so, and yet allow rapine against us: Which kind is covered with the specious title of Letters of Marque, called *Jus Reprisalarum*. Goods taken from Pyrates, as they were wrongfully taken from others, are just Prize to the Captor, if account be made to the Admiral, tho such Goods shou'd be found not actually in the Pyrate's possession that took it, but his Successors. But if the Captor meets with the Goods of his Countryman or Friend, he is then obliged to let them be forthcoming to the Owner, upon the rendering him just satisfaction for his loss, charges and hazard. So that if a man redeem his Neighbour's Ship from a Pyrate or Enemy, he is to receive the price thereof of the Owner.

But

But if no claim be laid to Goods taken from a Pyrate, the same are to be delivered to the Admiral, who is to consider the Captor in his due part.

If any Ship or Goods be taken by an Enemy, and it happen that before it be brought *in praesidia vel locum tutum*, for the making of a Right, it should be retaken by any friend, the Owner, claiming such Ship or Goods, shall have them. *Hujusmodi enim Res non tam capta quam receptae intelliguntur.* But when such Goods are a lawful Prize to the Captor, then is the Admiral to have a tenth part, and the remnant to be divided among the Captors. And so the Ship that sets no sail, nor runs no hazard with the rest, is not entitled to the Spoyl. Provided always that such Prize, together with the Prisoners, be delivered in due time to the Captain, to be disposed of by the Admiral. So that if any person disposes of any such Goods before, he is liable to be punished, and the Receiver or Buyer imprisoned, till he give security that they shall be forthcoming to the Admiral and just Owner, according to the decision between the King

King of Scotland and Mowbray, anno

\* Tom. I. 1487. 17 Junii \*.

C. 24. Re-  
g. Scot.

And if two Foreign Nations are at War, and the Subjects of one takes a Ship from the other, within the bounds of a Neutral Country, friend alike to both, then may the Admiral of such Neutral Country set the Ship and its Crew at liberty, and restore her to her Owner, as if brought back to her own Port and Country. It being to the reputation of Princes to have their Country an *Asylum* to all Distressed Foreigners but Pyrates.

As concerning Letters of Marque, or *Jus Represaliarum*, or Goods taken under this Title upon Sea, shou'd not be looked upon as Prize; but we shou'd deal in that case so as not to punish a Son for the Father's fault; but that a difference shou'd be observed between the Innocent and the Guilty. Which was the cause of Constitutions made by Emperors of suppressing Reprizals in certain respects.

But in case we complain of such Reprizals, and the Princes to whom we make such Remonstrances are to be moved

moved with no Intercessions, but continue tacitly to wage War with us ; we may declare against him : He having in effect done it against us.

And therefore Letters of Marque have been allowable both by the Laws of *England*, and the old custom of *Scotland*, according to the tenure of the Act of Parliament made by *James the First of Scotland*, concerning Shipwrack, to be followed for a Rule in all such cases, that other Nations shou'd receive the same favour from us as we from them.

Now what Goods are taken by Re-prizals shall be brought and presented before the Admirals, that a just Inventory may be taken of them.

C H A P.

## C H A P. XXVI.

AS Fishing is common in its Privileges with Hunting and Hawking, so it is different from them in its Fishing in other Mens Ponds and Lakes, as is unlawful, being compatible with Theft: And that also in Rivers now adays, and parts of the Sea near the Possessions of some men that have a Grant from the King to hinder it.

As Fishing is the most conducive to the flourishing state of a Kingdom, so it has been preferred before all other Trades by all wise Princes, who have took peculiar pains to encourage and advance it, by Ordinances to build Ships and Boats for that purpose, and by allotting certain times only, upon pain of Fine, for Fishing, as that of Salmon; and not only upon pain of Fines, but also of Forfeitures and Death, according to the manner of the Offence, and

Con-

Contempt of their Decrees and Statutes.

\* The Prohibitions are such as forbid \* Vide  
the making or setting and using of Statuta &  
Crowes, Dams, Fosses, Parkings, Dyking Conflit. &  
and Herry Waters, in any Waters where Act. Re-  
the Sea ebbs and flows, under pain of gum Fran.  
Confiscation of all the Goods of the Angl. &  
Transgressors in *Scotland* \*, &c. Scot.  
\* Jac. 6.  
Parl. 6.  
Cap. 69.

As to their Priviledges. All Ships  
sailing into the parts where Herring are  
taken, during the taking thereof shall  
let down Sail after Day-light, drop  
their Anchor, and watch with Lanthorn  
and Light till day appear, lest they  
shou'd damage the Fishers either in their  
Boats or Nets. In *Denmark* the pain is  
Death to the transgressors † : And the † *Den-  
mark.*  
Fishers are forbidden to use Light in  
their Fishing by night, lest they deceive  
the Sailors with a false shew of a Port,  
or damage one another; with other  
provisions; and also concerning the  
length and breadth of their Nets \*.  
\* Vide  
Stat. Ang.

In the North of *Scotland* it is agreed by  
the Seafarers, that no Ground-draff nor  
Drag-net be set before *March*, nor upon  
deeper Water than fourteen fathom.

That

That none shall equivocate when asked about the length and depth of his Tewe, when he is in driving, nor to suffer his Tewes to flit and run over one another, under pain of ten pounds for every such transgression.

That from Sun-set on *Sunday* no man lay nor hale his Nets or great Lines, or exercise any labour, under the same pain. And the better to encourage Fishers in the West and North of *Scotland*, there is a Statute, forbidding any Custome but the Queen's to be exacted from the Fishers, under pain due to manifest oppressors against them that exact it. And again, such Captors of Fish are ordered to bring such Fish taken near the Coast of *Scotland*, first to the Market-place, near which they themselves dwell, and then, after the refusal is made there, they may remove them to another; but in case they do not obey, then two thirds of such Fish to be confiscated to the Queen, and the other to the Magistrate.

As to the Barrelling of Fish, they are to follow the old measures. Each Barrel of Herring, or of white Fish, to be

of

of twelve Gallons. A Barrel of Salmon  
fourteen Gallons. And therefore Hoop  
Irons to be made in each Town, for  
the Tryal and Gauging thereof †.

† Vide  
Statut.  
Angl.

## C H A P. XXVII.

**A**S to Ships of War, having already  
touched upon their Priviledges be-  
fore, as they are the Queen's Ships, I  
shall come to speak of the Captains and  
Commanders of such Ships, in reference  
to their Duties, Power and Preferment.

And first, they should be Men, Good  
as well as Heroick, Vigilant and Care-  
ful, and therefore very temperate at Sea ;  
their Employment being as full of Hazard  
and Danger, as their Opportunities sud-  
den and momentary. And therefore  
their Power by Sea far surmounts that  
of Officers at Land, and consequently  
the greater their Honour, from so great  
Charge, Care and Hazard.

'Tis

Tis their Duty to choose men free from heinous and immoral Lives, that they keep them from Idleness, and punish such as are Rebellious or Irreverent to take they care have Food convenient to hear their mutual Complaints, to keep them in Peace and Obedience, and the like. As to the Duties of Captains to their Prince or Admiral, and their Priviledges, are gathered, and prevail from old Customs †.

† Vide L. Admir. de  
Franc.

## C H A P. XXVIII.

**F**erryers and Watermen are obliged to serve all Men in common for their due Wages, and upon denial may be compell'd, such Denyal giving cause of Action; and if they transgres a third time, they are lyable to be suspended from their Trade, except they can produce just and lawful Cause. †.

† Jas. 3.  
Parl. 13.  
C. 95.

So, for more convenient Landing of Men or Beasts, they are required to have convenient Bridges ready, or else to

lose

freelose their Boats. And are no less bound  
thanthan Skippers and Masters of Ships to  
nissender again whatever they receive to  
entbe carryed in their Boats.

It is unnecessary to take notice here of  
their ordinary Fares and Hires. It be-  
ing at length in the Statutes of *England*  
and *Scotland*: And further, because their  
Fraughts, according to the rate of times  
are often changed and altered.

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## C H A P. XXIX.

**L**astly, we are to consider the Instru-  
mental Causes of all Sea-faring,  
viz. Shipwrights, and builders of Boats  
and Ships, call'd by the *Grecians* and  
Romans, in imitation of them *Nauspegi*,  
and therefore subject to the Jurisdiction  
of the Admiralty, as being accountable  
to the Admiral or his Judges for their  
diligence and dutiful discharge of their  
Office, in reference to the goodness of

their work, or else they are lyable to the pain of the Law, call'd *Lex Aquilia*, to answer whatever loss happens by their unskilfulness or negligence. And therefore they should take care that their materials be good, and if such Furniture is not their own, but must have it of another, they must be cautious of taking up with bad. Nor are they to put green Timber in their work, but ought to see, if they can, their Wood cut either at the Wan of the Moon, or in the middle of the Winter, that it may be solid and durable; for Timber cut at improper times is full of moisture, and when dried, is apt to open and receive Water: Likewise they are to be as nice in the choice of their Iron. As to their Fees, it often happening before the Work that is done they cavil about them; they ought to bargain before the Admirals, Deputy or Judge, and such Contract to be registered in their Books. If a Shipwright contract with the Commissioners to build a Vessel in such an appointed time, and he exceed the time limited, he is lyable to any Pain or Forfeiture the Commissioners shall

shall think fit, unless he produce some  
inevitable cause of his Non-performance,  
as either bad Weather, which renders  
him incapable of working; or that he  
above his diligence, and that the short-  
ness of the time was not sufficient for the  
Work contracted for.

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**F I N I S.**

~~1. The following is a list of the names of the members of the Board of Education, with the date of their election, and the term for which they were elected.~~

BOOKS Printed for Isaac Gleave next Ser-  
jeants Inn in Chancery Lane.

1. **T**HE Law French and Law Latin Dictionary Alphabetically digested, very useful for young Students in the Common Laws of *England*, pr. 6 s.
2. The Law of Corporations, containing the Laws and Customs of all the Corporations and Inferior Courts of Record in *England*, treating of the Essentials of and Incidents to a Corporation of Mayors, Bayliffs, Sheriffs, &c. Together with the Stiles and Titles of most Corporations in *England*, pr. 5 s.
3. The Draughts of the most remarkable fortify'd Towns in Europe, in 44 Copper Plates, with a Geographical description of the Places, and the History of the Seiges they have sustain'd, and the Revolutions they have undergone for above 200 years last. To which is added an Introduction to Military Architecture or Fortification, containing the Origin and Progress of that noble Art; with the explanation of all the Terms belonging to the same; a Work very useful to all Gentlemen and Officers in the Army, by Mr Boyer, 40, pr. 6 s.
4. The History of *England*, faithfully extirpated from Authentick Records, approv'd Manuscripts, and the most celebrated Histories of this Kingdom in all Languages, whether Ecclesiastical or Civil, with the Effigies of all the Kings and Queens of *England*, from the Norman Race to the present time; curiously engraven on Copper Plates from original Medals and Pictures, in 2 Vol. the ad Edition corrected, pr. 12 s.
5. The new Atlas, or Travels and Voyages in Europe, Asia, Africa and America thru the most Renown'd parts of the World, &c. Perform'd by an English Gentleman in 9 years Travels and Voyages, more exact than ever, pr. 3 s.